

Part III – Administrative, Procedural, and Miscellaneous

Section 807(e)(4) Exception for §338 Regulations

Notice 2010-1

Section 1.338-1(b)(1) of the Income Tax Regulations provides that after an election under §338(g) or §338(h)(10) of the Internal Revenue Code, new target is generally treated as a new corporation unrelated to old target for purposes of subtitle A of the Code. Section 1.338-1(b)(2) provides exceptions for provisions in subtitle A under which new target and old target are treated as the same corporation. Sections 1.338-1(b)(2)(i) through (vii) enumerate seven such exceptions. Section 1.338-1(b)(2)(viii) authorizes the addition of other exceptions by designation of such in the Internal Revenue Bulletin. This notice designates such an exception.

Section 807(e)(4)(A) provides that in the case of a "qualified foreign contract," the amount of the reserve under §807 is not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country in which the foreign life insurance branch of the domestic life insurance company has its principal place of business. For this purpose, §807(e)(4)(B) defines a "qualified foreign contract" as a contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if (1) the contract is issued on the life or health of a resident of that country;

(2) the domestic life insurance company was required by the foreign country (as of the time it began operations in the country) to operate in the country through a branch; and
(3) the foreign country is not contiguous to the United States.

The Internal Revenue Service and Treasury believe it would be inappropriate to treat new target as a new corporation unrelated to old target for purposes of §807(e)(4)(B). The fact that §1.338-1(b)(1) would otherwise treat new target as a new corporation for Federal income tax purposes does not result in a change in the terms of the contracts that are qualified foreign contracts within the meaning of §807(e)(4)(B), nor does it alter the requirements of the regulatory authority of the foreign country that were in effect when old target's foreign life insurance branch began operations in that country. Cf. §1.338-1(b)(2)(vii) (treating new target and old target as the same corporation for purposes of electing to use an insurance company's historical loss payment pattern to compute discounted unpaid losses).

Accordingly, pursuant to the authority of §1.338-1(b)(2)(viii), for purposes of §807(e)(4), new target and old target, within the meaning of §1.338-2(c)(17), are treated as the same corporation.

This notice is effective for qualified stock purchases occurring on or after December 10, 2009. In addition, taxpayers may elect to apply this Notice to any qualified stock purchase with respect to which the election under §338(g) or §338(h)(10) is due on or after such date by treating new target and old target as the same corporation for purposes of §807(e)(4).

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